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UNITED STATES OF AMERICA
In the
SUPREME COURT OF THE UNITED STATES

October Term, 1943

No. 160

NEIL E. REID, Circuit Judge of the Sixteenth Judicial Circuit, sitting
in and for the County of Saginaw,

Petitioner and Defendant Below,

vs.

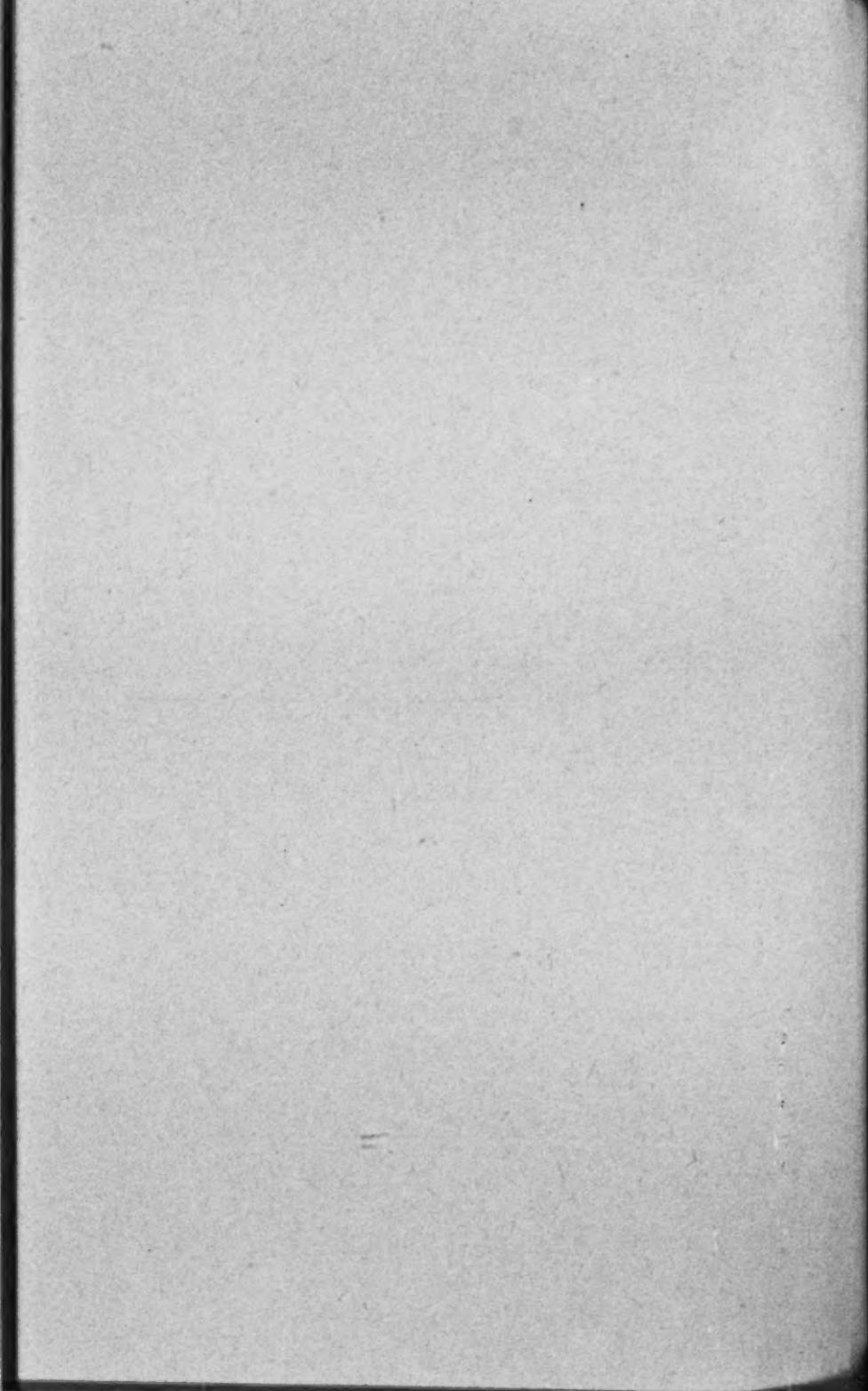
SECOND NATIONAL BANK AND TRUST COMPANY,
of Saginaw, Michigan, individually, and as Trustee under the
Ninth and Tenth Paragraphs of the Will of Arthur D. Eddy,
Deceased, and

CHARLOTTE EDDY MORGAN,

Respondents and Plaintiffs Below.

**BRIEF IN OPPOSITION TO
PETITION FOR CERTIORARI**

THOMAS G. LONG,
1881 National Bank Bldg.,
Detroit, Michigan.
Attorney for Respondents.



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ARTHUR D. EDDY died at Saginaw, Michigan, April 22, 1925, leaving a will which was allowed by the Probate Court for the County of Saginaw. Executors were appointed and the Estate was administered under the jurisdiction of that Court. The will created two trusts—paragraph Ninth under which Lila Eddy Doebler was beneficiary for life and Cynthia Mills Cleveland remainderman of one-half on the death of the life tenant and the other one-half went to the trust under paragraph Tenth of the will which from the beginning was a trust for charity. When the Executors had concluded the administration the Probate Court of

Saginaw County on June 21, 1926, made its order of assignment to Second National Bank and Trust Company of Saginaw and George L. Humphrey as Trustees named in the will. The Trustees filed their bond and duly qualified before said Court. The individual Trustee having died in 1932 said Bank has ever since been sole Trustee. Under the law of Michigan Testamentary Trustees are required to account annually to the Court which allowed the will and made the order of assignment. Compiled Laws 15880.

The Trustee on June 8, 1934, filed a bill in the Circuit Court for the County of Saginaw in Chancery seeking construction of the will and instructions and directions. This was removed by Cynthia Mills Cleveland who is a nonresident of Michigan to the District Court of the United States for the Eastern District of Michigan, Southern Division, at Bay City, Michigan. An amended bill was filed by the Trustee in the Federal Court (Pleading A herein 41). Cynthia Mills Cleveland filed a crossbill bringing in several new parties including Charlotte Eddy Morgan, Respondent herein, who was not a beneficiary of the trust (Pleading A herein 68). The issues on the amended bill and the crossbill were litigated at length in the Federal Court and an extended decree made (Pleading A herein 235). Cynthia Mills Cleveland appealed to the Circuit Court of Appeals for the Sixth Circuit which affirmed the decree (117 F. (2) 1009). Application was made to this Court for certiorari which was denied (313 U. S. 594).

Cynthia Mills Cleveland on January 15, 1942, filed a new bill in the Circuit Court for the County of Saginaw in Chancery alleging that—

1. In the former litigation said Circuit Court for the County of Saginaw in Chancery was without jurisdiction (asserting the jurisdiction of the Probate Court

for the County of Saginaw to be exclusive) and hence the Federal Court on removal obtained no jurisdiction and the decree was a nullity.

2. In the proceedings before the United States Circuit Court of Appeals for the Sixth Circuit on the appeal in the former litigation fraud was committed by counsel for the Trustee by making false statements outside the record.

3. In the proceedings before the United States Supreme Court on the application for certiorari there was fraud by the Merchantile Trust Company of Baltimore, Trustee under a Deed of Trust made by Lila Eddy Doebler, life tenant of the trust under paragraph Ninth of the will in suit in that said Mercantile Trust Company submitted a brief opposing the granting of certiorari whereas the bill asserted said Mercantile Trust Company by reason of being trustee of said trust was under duty to support said application.

The Circuit Judge, petitioner herein, refused to dismiss the bill.

Second National Bank and Trust Company individually and as Trustee and Charlotte Eddy Morgan then petitioned the Supreme Court of Michigan (under established practice in Michigan) to grant a writ of prohibition against further proceedings in said suit so brought by Cynthia Mills Cleveland in the Circuit Court for the County of Saginaw in Chancery and to vacate the orders made by and in said Circuit Court in said suit. The grounds set up as the basis for granting the writ of prohibition were that—

1. The Circuit Court for the County of Saginaw in Chancery had jurisdiction on the bill filed by the Trustee which began the former litigation.

2. The crossbill filed by Cynthia Mills Cleveland in the Federal Court brought in Charlotte Eddy Morgan and others not parties to the original bill and not beneficiaries of the trust under the will, and the Probate Court for the County of Saginaw could not possibly have jurisdiction over such additional parties.

3. The alleged fraud before the Circuit Court of Appeals was outside the Record and had been made the subject of a motion for rehearing before said Circuit Court of Appeals and in any event was intrinsic to the proceeding.

4. There could be no fraud in filing the brief before the United States Supreme Court on the application for certiorari. The brief spoke for itself and was open to answer.

The answer to the petition for prohibition set up no federal question whatsoever.

Obviously the question whether the Circuit Court for the County of Saginaw in Chancery had jurisdiction on the first bill (that filed by the Trustee) is solely a question of Michigan law. If it did then the Federal Court had at least the same jurisdiction after removal.

CHARLOTTE EDDY MORGAN was not interested in that question. She was not a party to the bill filed by the Trustee in the Circuit Court for the County of Saginaw in Chancery. She defended a litigation brought against her by crossbill in the Federal Court filed by Cynthia Mills Cleveland. She first became a party to the litigation in the Federal Court. This had the effect of broadening the scope of the litigation beyond that of the original bill by the Trustee.

Freeman v. Bee Machine Co., June 1, 1943, 87 L. ed. 1074.

Whether or not there was fraud before the United States Circuit Court of Appeals in procuring the affirmance of the judgment presents no federal question. There is no claim of fraud in procuring the judgment in the Federal District Court. Even if there were that would not be a federal question.

Whether the trustee of the Doebler trust should have supported rather than opposed the application for certiorari made by Cynthia Mills Cleveland to the United States Supreme Court presents no federal question. Even if Mercantile Trust Company acted contrary to its duty what it did was open and above board. It submitted its brief on the application. Counsel for Cynthia Mills Cleveland had full opportunity to answer the same.

The only attempts made in the petition for certiorari herein to state federal questions are in the last paragraph, page 20, and the last three paragraphs, page 21. It is obvious that these paragraphs state nothing but normal incidents of the judgment of a State court on questions of local law—jurisdiction of State courts as between one another and claimed fraud in the course of litigation.

It is respectfully submitted that there is no basis whatsoever for the granting of certiorari herein.

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Attorney for Respondents.